

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 15-50792

The Diocese of Duluth,

Chapter 11

Debtor.

**NOTICE OF EXPEDITED HEARING AND JOINT MOTION FOR DEEMED
ACCEPTANCE OF THIRD MODIFIED JOINT CHAPTER 11 PLAN OF
REORGANIZATION OF THE DIOCESE OF DULUTH**

TO: Entities specified in Local Rule 9013-3:

1. The Diocese of Duluth (the “**Diocese**”) and the Official Committee of Unsecured Creditors (the “**Committee**”), through their undersigned attorneys, respectfully move the Court for the relief requested below and gives notice of expedited hearing.

2. The Court will hold an expedited hearing on this motion on **Monday, October 21, 2019, at 11:00 a.m.** in Courtroom No. 2, 4th Floor, United States Courthouse, 515 West First Street, Duluth, Minnesota.

3. Local Rule 9006-1(c) provides deadlines for response to this motion. However, given the expedited nature of the relief sought, the movants do not object to written responses being served and filed two (2) hours before the time set for hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure and Local Rule 1070-1 for the United States Bankruptcy Court for the District of Minnesota (“**Local Rules**”).

5. This motion arises under 11 U.S.C. §§ 105 and 1127 and Fed. R. Bankr. P. 3019(a). The motion is filed under Fed. R. Bankr. P. 9013 and 9014 and Local Rules 3019-1, 9006(e), and 9013-1.

6. The Debtor filed its voluntary petition on December 7, 2015, [Doc. No. 1], and has been operating as a debtor-in-possession since that time pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. On December 28, 2015, the Office of the United States Trustee appointed the Committee. [Doc. No. 30].

8. On July 9, 2019, the Diocese and the Committee filed a Joint Chapter 11 Plan of Reorganization of the Diocese of Duluth [Doc. No. 386] and related Disclosure Statement [Doc. No. 385], each dated as of July 9, 2019. The Court entered an Order and Notice for Hearing on the Joint Disclosure Statement on July 10, 2019 [Doc. No. 387], and set the hearing on the adequacy of the joint disclosure statement for August 22, 2019.

9. On August 16, 2019, the plan proponents filed a First Modified Joint Disclosure Statement for Chapter 11 Plan of Reorganization Proposed by the Diocese of Duluth and the Official Committee of Unsecured Creditors (the “**Modified Disclosure Statement**”) [Doc. No. 392] and First Modified Joint Chapter 11 Plan of Reorganization of the Diocese of Duluth (the “**Modified Plan**”) [Doc. No. 393], with the Modified Disclosure Statement being dated July 9, 2019, and the Modified Plan being dated August 14, 2019.

10. On August 26, 2019, the plan proponents filed a Second Modified Joint Chapter 11 Plan of Reorganization of the Diocese of Duluth (the “**Second Modified Plan**”) [Doc. No. 398], dated August 26, 2019.

11. The Court approved the Modified Disclosure Statement and established procedures for solicitation and tabulation of votes by Order dated August 27, 2019. [Doc. No. 400]. The plan confirmation hearing is set for October 21, 2019. [Doc. No. 401].

12. In order to be counted as a vote to accept or reject the Second Modified Plan, ballots needed to be received by the clerk no later than October 16, 2019. [Doc. No. 401].

13. After solicitation on the Second Modified Plan in accordance with the Court's Order, the plan proponents were presented with comments from parties-in-interest to this case and made responsive modifications to the Second Modified Plan. These modifications are incorporated into the Third Modified Joint Chapter 11 Plan of Reorganization of the Diocese of Duluth (the "**Third Modified Plan**") [Doc. No. 413], dated October 15, 2019.

14. The modifications are as follows:

- a. To Exhibit H, List of Current Parishes, add the additional Parish – St. Philips Parish, Saginaw; and
- b. At paragraph 53 of the Plan, Article I, Definitions and Interpretation, 1.1 Defined Terms, add the underlined language:

5.3 "Parish Parties" means collectively the Catholic Entities and, in their capacity as such: (i) each of the past, present, and future parents, subsidiaries, merged companies, divisions, and acquired companies of the Catholic Entities; (ii) any and all named covered party and additional covered party under the certificates of insurance issued by Catholic Mutual, including every Protected Person (as defined in the parish certificates); (iii) any and all named insured Person, insured Person, additional insured Person, or any other Person claiming coverage under any Diocesan Insurance Policy, including every Protected Person (as defined in such Diocesan Insurance Policy); (iv) each of the foregoing Persons' respective past, present, and future parents, subsidiaries, merged companies, divisions, and acquired companies; (v) each of the foregoing Persons' respective predecessors, successors, and assigns; and (vi) any and all past and present employees, officers, directors, shareholders, principals, teachers, staff, members, boards, administrators, priests, deacons, brothers, sisters, nuns, other clergy or Persons bound by monastic vows, volunteers, agents, attorneys, and representatives of the Persons identified in the foregoing subsections (i)-(vi). Nothing in the

foregoing is intended to suggest that such Persons are “employees” or agents of a Catholic Entity or subject to its control. For avoidance of doubt, the term “Parish Parties” includes Diocesan Parishes, and Catholic Entities which are not Parishes, and are only combined herein for ease of reference. An individual who perpetrated an act of Abuse that forms the basis of a Tort Claim is not a Parish Party as to that Tort Claim. No religious order, archdiocese, or diocese is a Parish Party.

None of the modifications adversely change the treatment of the claim of any creditor.

15. Specifically, St. Philips Parish, Saginaw, is a parish that closed in 2011 and merged with neighboring parishes. These neighboring parishes were all listed on Exhibit H of the Second Modified Plan. In addition, the added language in Paragraph 53 is intended to clarify that the nomenclature of "Parish Party" does not indicate that the term, as used in the plan, is exclusive to "parishes" as that term is commonly used, but rather "Parish Party" includes a variety of entities related to the Diocese of Duluth as more specifically defined in the preceding language of Paragraph 53. The scope of the entities included in "Parish Party" was evident by way of the technical definition of "Parish Party," but interested parties requested further clarity. In sum, these changes are in accord with the original intent of the Second Modified Plan proponents and have no substantive effect on the plan's treatment of creditors, the scope of releases in the plan, or any other material aspect of the plan.

16. Plan objections were required to be filed and served by no later than October 16, 2019. *See* Local Rule 3020-1(c).

17. By this motion, the plan proponents seek an order of the Court determining that all creditors who accepted the Second Modified Plan are deemed to accept the Third Modified Plan.

18. Pursuant to Local Rule 9011-4(f), the undersigned authorize the filing of this Motion and the related memorandum in support with their electronic signatures.

WHEREFORE, the Diocese and the Committee request (i) an expedited hearing, and (ii) entry of an Order determining that all creditors who accepted the Second Modified Plan are deemed to accept the Third Modified Plan in accordance with Bankruptcy Rule 3019(a).

Dated: October 15, 2019

Dated: October 15, 2019

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MEMORANDUM OF LAW

The Diocese of Duluth (the “Diocese”) and the Official Committee of Unsecured Creditors (the “Committee”), through their undersigned attorneys, submit this memorandum of law in support of their joint motion for expedited relief and deemed acceptance of the Third Modified Plan. The underlying facts are set forth in the motion and are incorporated herein. Capitalized terms not otherwise defined herein have the definition set forth in the motion.

EXPEDITED RELIEF

Expedited relief is permitted upon a showing of cause. Bankruptcy Rule 9006(c). Cause exists for this motion given the impending plan confirmation hearing on October 21, 2019. A significant part of the consideration for entering into the joint plan is the parties’ willingness to move this case forward to resolution so that payments to survivors of sexual abuse can be made as expeditiously as possible. Moving out the confirmation hearing even for a short period of time could seriously jeopardize such consideration. Additionally, the modifications to the Second Modified Plan were made to add an additional parish as well as clarify the definition of the term “Parish Parties”—neither of which are substantive changes. None of the changes will adversely affect the rights of any creditor, and therefore reducing the notice time period will not negatively impact any creditor who has already accepted the Second Modified Plan.

RULE 3019 RELIEF

This motion is governed by Bankruptcy Rule 3019(a), which provides that, upon notice and a hearing, the Court may determine that ballots cast for a prior plan are deemed to apply to a modified plan if “the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification.” Ballots have been cast in connection with the Second Modified Plan. However, as explained above, the modifications made after solicitation of votes do not adversely change the treatment of the claim of any creditor. Therefore, this Court should grant the relief requested by the plan proponents.

CONCLUSION

Based on the above, the plan proponents seek an order granting expedited relief and determining that all creditors who accepted the Second Modified Plan are deemed to have accepted the Third Modified Plan.

[Signature blocks to follow on next page]

Dated: October 15, 2019

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ORDER

Based on the joint motion of the Committee and the Diocese for deemed acceptance of the third modified joint chapter 11 plan of reorganization,

IT IS ORDERED:

1. The motion for expedited hearing on this matter is granted.

2. All ballots accepting the second modified joint chapter 11 plan of reorganization, dated August 26, 2019, are deemed to accept the third modified joint chapter 11 plan of reorganization, dated October 15, 2019.

Dated:

Robert J. Kressel
United States Bankruptcy Judge

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UNSWORN CERTIFICATE OF SERVICE

I, Jessica A. Tauer, certify that on October 15, 2019, the following documents:

- Notice of Expedited Hearing and Joint Motion for Deemed Acceptance of Third Modified Joint Chapter 11 Plan of Reorganization of the Diocese of Duluth,
- Memorandum of Law, and
- Proposed Order

were filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to all electronic filing users.

Dated: October 15, 2019

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